No 84-122 (2)

In the Supreme Court of the United States

October Term, 1984

STATE OF OHIO,
Petitioner,

vs.

HARRY L. CHATTON,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Whether a mistaken belief by a law enforcement officer that an individual's conduct is a violation of the law constitutes a good faith exception to the Fourth Amendment exclusionary rule where evidence is obtained without a warrant.

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The respondent Harry L. Chatton, by and through his attorneys Alfred C. Grisanti and John M. Badalian, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Ohio Supreme Court's opinion in this case. That opinion is reported at 11 Ohio St. 3d 59.

SUMMARY OF ARGUMENT

1. The decisions of the Court rendered in *United States v. Leon*, 52 U.S.L.W. 5155 and *Massachusetts v. Sheppard*, 52 U.S.L.W. 5177 are clearly not applicable to the instant situation where a law enforcement official made

a warrantless seizure of a citizen due to his ignorance or disregard of state statutory law. The Court has voiced a strong preference for judicial scrutiny of warrantless searches and seizures in order to check the "unfettered discretion" sought by law enforcement. *United States v. Brignoni-Ponce*, 422 U.S. 873.

REASONS WHY THE WRIT SHOULD BE DENIED

1. Neither the previous decisions of the Court nor the record support the Petitioner's assertion that an objectively reasonable good faith warrantless seizure was made in this case.

The Petitioner's reliance on *United States v. Leon*, 52 U.S.L.W. 5155 (July 5, 1984) and *Massachusetts v. Sheppard*, 52 U.S.L.W. 5177 (July 5, 1984) is misplaced. *Leon* and *Sheppard* address the issue of whether the Fourth Amendment exclusionary rule should be applied so as bar the use in the prosecutor's case-in-chief of evidence obtained by law enforcement officials acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate, but later found to be invalid. In the instant case, the police officer initiated the seizure of the Respondent absent a warrant and without "the detached scrutiny of a neutral magistrate". *United States v. Chadwick*, 433 U.S. 1, 9. The Court found in both *Leon* and *Sheppard*, *supra*, that the Fourth Amendment cannot be expected and should not be applied to deter reasonable law enforcement activity, noting that, in both cases the law enforcement officers took every step that could be reasonably expected of them and that their conduct was objectively reasonable. The police officer in the present matter persisted in the seizure of the Respondent because of disregard or ignorance

of the statutory requirements of the law he had sworn to uphold. This was not a situation where the officer misconstrued a fact situation and erroneously applied it to existing law; but rather one where the officer correctly perceived the facts but proceeded in disregard or total ignorance of the law. The Petitioner is attempting to disguise this disregard or ignorance by labeling it as a "good faith objectively reasonable belief" when in fact, it is nothing more than "standardless and unconstrained discretion" on the part of the officer involved. *Delaware v. Prouse,* 440 U.S. 648, 661 (1979). The police officer's "belief" in this case is not the objectively reasonable belief of *Leon* or *Sheppard, supra,* but at best a subjective feeling by the officer. The Court stated in *Beck v. Ohio,* 379 U.S. 89, 97 that:

> If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate and the people would be secure in their persons, papers and effects only at the discretion of the police.

This Court has repeatedly emphasized that warrantless searches and seizures are subject to thorough review by the Court. *Delaware v. Prouse, supra, Almeida-Sanchez v. United States,* 413 U.S. 266. *Coolidge v. New Hampshire,* 403 U.S. 443, *Brown v. Texas,* 443 U.S. 47, *United States v. Brignoni-Ponce,* 422 U.S. 873 and that . . . "those charged with this investigation and prosecutorial duty should not be the sole judge of when to utilize constitutionally sensitive means in pursuing their tasks" *Almeida-Sanchez v. United States,* 413 U.S. 266, 280 (Powell, *J.* concurring).

The argument asserted by the Petitioner, if accepted, could only result in the kind of standardless and unconstrained discretion on the part of law enforcement officials

which the Court has checked in a consistent line of authority (cited, *supra*). This Court's efforts to establish a fair, common sense balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers, *Brown v. Texas,* 443 U.S. 47, 50 would be ill-served by the adoption of the Petitioner's flawed standard.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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